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ABSTRACT

This paper offers a humorous parable showing the trials and problems facing a chief lawyer for an institution of higher education. The lawyer, who happens to be a pit bull, faces such issues as deciding whether to take this new position at the university, his orientation to the university setting, his experience dealing with the workload and lack of staff, his experiences at university events and functions, conflicts with administration, and his relationship with his "wizard" mentor. Extensive footnotes cite popular literature and are intended to add to the paper's pedantic (and entertaining) tone. (DB)

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MAKING CLIENTS HAPPY -- IS IT POSSIBLE?
June 16-19, 1996

Brian Snow
Colorado State University
Fort Collins, Colorado

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Brian Snow

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## *BOOMER'S BANANA PEELS*
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## *WHO WANT TO MAKE THEIR CLIENTS HAPPY*

Boomer had been a lawyer in a large firm in a big city for many years. Since he was also a pit bull, the people who hired him, his clients, expected him to be mean, tough, and even nasty.[1] After all, weren't lawyers supposed to be fighters? How else could he help them get out of their quarrels with others and tight spots with the police? They wanted him to snarl and show his teeth and scare everybody who got in their way.[2] Of course, they praised him when he did well, but later most of them yelled at him--by telephone, of course--about the amount of money he asked them to pay him. Sometimes, Boomer thought his price of $500 an hour might be a bit steep, but he didn't dare lower it because the other lawyers in his firm would

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[1]"When I was a young lawyer feeling my power, my strategy in a certain case was to attack and destroy every witness the other side put against me. I took on the witnesses, old men with watery eyes who I knew were but company sycophants trying to keep their jobs. I took on the experts, scholarly actors who I knew were but paid witnesses attempting to earn their fees rather than reveal the truth. Cut them up, shredded them, pulverized them. The jury was out only fifteen minutes before it returned a verdict against my client. I was devastated. Hadn't I won every battle? Hadn't I destroyed the witnesses? Hadn't my power on cross-examination been overwhelming?

As the jury was filing out of the courthouse, one of the women approached me. She looked up at me with tears in her eyes. It had obviously been hard for her to turn my severely injured client out of a court of justice with nothing.

'Mr. Spence,' she said quietly, 'why did you make us hate you so?'"
GERRY SPENCE, HOW TO ARGUE AND WIN EVERY TIME 44-45 (1995).

[2]Perceptions of pit bulls as being consumed with aggression and hostility are often hyperbolic. As to the former, *see* J. STAHLKUPPE, AMERICAN PIT BULL AND STAFFORDSHIRE TERRIER (1995), which states, "In the last two decades of this century, no breed of dog has been more maligned and misunderstood than the American pit bull terrier," and emphasizes that their closest friends view them as being loyal, intelligent and clean, with an excellent temperament. Moreover, pit bulls almost never bare their teeth or make much noise in adversarial contexts. *See* R. STRATTON, THE AMERICAN PIT BILL TERRIER (1976). However, lawyers are often depicted as being highly combative and pugnacious. *See* B. VEECK, THE HUSTLER'S HANDBOOK 335 (1965), which observes: "Next to the confrontation between two highly trained, finely honed batteries of lawyers, jungle warfare is a stately minuet." Other impressions have contributed to more pejorative commentary. For example, Mark Twain once said, "The more I see of lawyers, the more I despise them. They seem to be natural born *cowards*, and on top of that they are God damned idiots." MARK TWAIN'S LETTERS TO HIS PUBLISHERS, 95 (1965).

then write him angry notes, claiming that he wasn't earning enough money for them to share.[3] This made him feel badly because, unlike many pit bulls, Boomer had been raised to be kind and gentle. His mother had taught him over and over to serve people, to try to make them happy.

One day Boomer got a call from one of his law school classmates, Dr. Spot, a professor at the law school at the State University, which caused him to become curious and excited. His friend, a smooth-voiced cocker, told him that the chief lawyer for his school was retiring and asked if Boomer knew of anybody who might be a good "fit" for the job. Boomer said he would think about it and call him back. Boomer then grinned broadly as he pondered the implications of this call for his future.[4]

Boomer thought about all of his squabbles in the past over charges; the pressures placed upon him to work more hours and get more clients; his fear of missing deadlines; the late meetings and weekend work that he and his wife, Glorie, a wisp of a poodle who operated on weak hearts, had endured, rather than attending soccer games and planning picnics.[5] He daydreamed about wearing the academic's tweed coat with leather elbow patches and biting the pipe that would never be lit. He then shouted "Eureka.[6] This is it! There's a place where I can make everybody happy."

He then called Dr. Spot and described his interest in being a candidate for the position. Spot exclaimed, "Boomer, are you out of your mind?! You're making five times as much money as you'll ever make in that job and it is not easy to satisfy all of the professors, students, managers, and alumni here. You'll be working with the President a lot and you know how insensitive that old buzzard can be. What about living in Fall Creek? It is such a stiff-necked, provincial little town.[7] Why, Hardee's was voted our

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[3]*Compare* GILLIAN KELLY, *The Little Red Hen retold in* THE RANDOM HOUSE BOOK OF BEDTIME STORIES 96-99 (Random House, 1994).

[4]Watching a pit bull grin, especially in a broad manner with a thought racing through its mind, can be a transcendent experience.

[5]"The term *'lawyer'* in America has come to connote egoism and rabid competitiveness coupled with greed, a seeming detachment from issues of right and wrong, and yes-- one who is very bright and hardworking but, so often, dull."
RICHARD W. MOLL, THE LURE OF THE LAW: WHY PEOPLE BECOME LAWYERS, AND WHAT THE PROFESSION DOES TO THEM 3 (1990).

[6]The expression "eureka" is rarely seen except in stories for children and comic strips. "Eureka" was made famous by the mathematician Archimedes. According to the story, Archimedes, as he was washing, thought of a way to compute the proportion of gold in King Hiero's crown by observing how much water flowed over the bathing-stool. He leapt up as one possessed, crying *Heureka! (I've found it).* After repeating this several times, he went his way.
*See* MICHAEL MACRONE, EUREKA! WHAT ARCHIMEDES REALLY MEANT AND 80 OTHER KEY IDEAS EXPLAINED 77-78 (1994).

[7]*Compare* S. LEWIS, BABBITT (1922).

best restaurant last year. Won't you miss the pro football games, the symphony and the stores? Also, don't you think you might be overqualified?"

"No, this is what I want to do," Boomer responded. "This would be a much more satisfying life for me. I'm going to pull out all the stops to get that job.[8] Spot then nominated Boomer and after a quick search, which lasted only eight months, Boomer got the job.

## II

## BOOMER ARRIVES ON CAMPUS

In his first day on the job, Boomer met with the lawyer he was replacing, a perky, sharp-eyed collie, who had always been known simply as "The Wizard."[9] The meeting was scheduled for 7 a.m., which seemed a bit odd to Boomer since he didn't view himself as a "morning person" and rarely went to work at his law firm before 9.

"A little early, huh?" he said to The Wizard as she showed him his new office.

**"Early? Not at all," The Wizard replied, "people here expect the counsel to be accessible at all times. Otherwise they're not happy. I generally come in about six and leave about seven in the evening. Of course, on weekends I don't get in until seven and I only stay until two or so."**

Boomer gulped.[10] He then asked, "Why do you work so much? Is the workload really that heavy? That should be an easy problem to solve. Why don't you just hire some more lawyers?"

**"Oh, there's no budget for new hires. Yes, the workload is indeed that heavy and there are only three of us, but we get by. You see, the President and others around the campus are quite concerned about administrative costs. If they're too high, nobody is happy. The Board, the legislature, and the press come at us pretty hard when that happens."**

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[8]For an example of perseverance and tenacity rewarded, *see* DR. SEUSS, *Horton Hatches the Egg (1940), in* SIX BY SUESS 92-146 (1991).

[9]Nobody ever called "The Wizard" by any shortened form of identification or nickname such as "Wizard" or "Wiz." Such usage of her name would have been contrary to the campus culture.

[10]Few writers or scholars have been able to duplicate the exact sound of a "gulp." Nevertheless, the word is commonly used, particularly in fiction. It probably is derived from "me gulpen," and means to choke back as if swallowing; to repress, as a sob.
DONALD R. KLOE, DICTIONARY OF ONOMATOPOEIC SOUNDS, TONES AND NOISES IN ENGLISH AND SPANISH 58 (1977).

"Well, then, I suppose the lack of money is also the reason why this office is so small. I had hoped to put a small conference table in it like I had at my law firm. Your view is limited, isn't it? All I can see is the back of that big building over there. My view in the city was spectacular, but I understand. This place is financed with taxpayer's money so you don't have many frills, do you? My, its a bit hot in here. Have you turned on your air-conditioner?"

**"We don't have air-conditioning. This is the administration building. Since many members of our faculty don't have cooling facilities, we'd look pretty pompous if we had it, wouldn't we? They wouldn't be very happy with that. I imagine that the legal office will be the last to get it. In one of his speeches the other day, the President asked whether higher education had gone too far in trying to be all things to all people. He noted that we once got by without student advisory services, public relations, lawyers and other such *things*. So, I've felt pretty lucky to have this job and any kind of office."**

"I see. Well, I definitely want to make people happy.[11] The University will be my only client now. Are you retiring because you have too much work and not enough money?"[12]

**"Oh, no, those aren't the reasons I'm leaving. I always accepted these limitations rather than worrying about my own needs. A University counsel has to be that way. I'm retiring because I've been here twenty years and at my advanced age, there are many things I want to do that I haven't been able to do because of my work. I'm forty-nine now and it is time for me to get some rest and enjoy life.[13] But I will tell you this. I've never enjoyed anything I've ever done as much as this job. I will miss it greatly. I've been a part of some great advances in education--things that have had meaning to me, and, as far as I'm concerned, mean much for our future."[14]**

"But have you made people happy? Is it possible to make the clients happy in a place such as this. That's what I want to do."

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[11]For an explanation of the common denominators in happy people, *see* WHOLEY, ARE YOU HAPPY? (1986).

[12]"The law, though a profession, must also be a means of livelihood." *See* JACKSON, THE WIT AND WISDOM OF THE SUPREME COURT, 267 (1962) *quoting* Justice Cardozo. *Compare*, S. LINOWITZ, THE BETRAYED PROFESSION, which observes, "Too many in my profession have taken a calling that sought the good society and twisted it into an occupation that seems intent primarily on seeking a good income. The change has been widely if not some wistfully accepted. When Alexander Forger, managing partner of the great New York Law firm Milbank Tweed, told his partners, 'We are not a trade or business; we are a profession,' he described his statement as 'a hysterical note from the past'."

[13]"I think when the full horror of being fifty hits you, you should stay home and have a good cry." A. Bleasdale, British playwright and novelist, *quoted in* R. ANDREWS, THE COLUMBIA DICTIONARY OF QUOTATIONS, 26 (1993).

[14]*See* R. COLE, THE CALL TO SERVICE (1993). *Contra,* P. SMITH, KILLING THE SPIRIT (1990).

**"Well, I really think that I have only one client--the University.[15] So, when you talk about making people happy, I assume that you're talking about those within the University who become 'sub-clients' because their legal interests are consistent with those of the University. However, the key question is whether we make the University happy. Let's find out."**

The Wizard then turned on her speaker phone and called the University.[16] The University always spoke with a strong, commanding voice,[17] even though it sometimes reached an excited pitch when it used the word "resources."

When the University answered,[18] The Wizard said, **"We're sorry to bother you because you have such a busy schedule, but your new general counsel is here and he wants to know whether we've made you happy as a client."**

The University then responded, *"What do you mean by "happy"?[19] This word is often used to describe one's feeling at a certain time, but I don't think it can ever be complete. I have found that seeking to make people happy is like trying to grab fog out of the air.[20] It is there for a moment and then it changes or goes away. You may be happy on your next birthday when you blow out the candles on your cake and*

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[15]*Compare* United States v. Nixon, 418 U.S. 683 (1974).

[16]Those cynics who question whether one can call an inanimate object like a university on the telephone should keep in mind that the outgoing general counsel is a wizard and that if such things weren't possible, characters like the Road Runner and Bugs Bunny, who have so often enriched our lives, would never recover from being smashed flat. Nobody would be able to "leap tall buildings at a single bound," and there would be no Santa Claus. Yet, most of us have seen that such things are real despite the protestations of non-believers.

[17]Some observers likened the University's voice to that of the late John Facenda of NFL films, who was termed by some as having "the voice of God."

[18]Unlike many others, The Wizard usually had little difficulty gaining access to the University because it often feared that her first words would be "major lawsuit" or "NCAA investigation." However, Henry Kissinger once said that "University politics are vicious precisely because the stakes are so small." *See* ROBERT BYRNE, 1911 BEST THINGS ANYBODY EVER SAID (1988).

[19]Philosophers have struggled forever with the meaning of this term. *See, e.g.*, DURANT, THE PLEASURES OF PHILOSOPHY, 54 (1929, rev. 1952), where the author refers to the characterization of "happiness" in the "Orient" as "the cessation of the desire and the bliss of the surrendered personality; and a "somber fatalism between priest and sage" and Eric Hoffer's view of the search for happiness as being one of the chief sources of unhappiness.

[20]See almost any of the statements uttered by David Caradine or "Grasshopper" in an episode of *Kung Fu*.

*have fun with your friends, but won't this be your fiftieth birthday? I don't think you'll be very happy about being fifty. You'll probably be unhappy when the party has to end."* [21]

"This is Boomer. Glad to be here, Honorable University.[22] I suppose what I'm really asking is whether you have been pleased and satisfied with the work of your legal office."

*"In general, I have been pleased and satisfied. However, this requires some explanation. So much of my response depends on what I hear from those within me who carry out my mission and objectives. Sometimes they are pleased and satisfied and sometimes they are not. As far as I'm concerned, that's the way it should be. Some of my helpers have tastes and desires that are contrary to what is best for me. My General Counsel must protect me in those instances even though it results in displeasure and unhappiness. You see, I don't want my General Counsel to attempt to make everybody happy. The most important thing to me is whether you are competent with the highest degree of ethics and integrity and that you serve me to the best of your ability. I expect you to give your undivided professional allegiance and loyalty to me."*[23] *Furthermore, I want you to fulfill the level of confidence I have placed in you by giving a corresponding return of zeal, diligence and good faith in your work on my behalf.*[24] *Finally, I ask that you be resourceful, orderly, and dispassionate in your thinking and your approach in responding to my problems.*[25] *In meeting these expectations, I anticipate that you will exhaust every effort to avoid and assist in redressing, where*

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[21]*See* ANDREWS, *supra* note 13.

[22]Salutations involving such bestowal of honor and respect are rare in a self-preoccupied society, but were important gestures of civility in the vernacular of Boomer's culture.

[23]"Undivided allegiance and faithful devoted service to a client are prized traditions of the American lawyer."
Hugo L. Black, Von Moltke v. Gillies, 322 U.S. 708, 725-726, *quoted in* THE WISDOM OF THE SUPREME COURT, at 266 (Percival E. Jackson ed., 1962).

[24]See Hays Swayne, Baker v. Humphrey, II Otto (101 U.S.A.) 494, 500, *quoted in* THE WISDOM OF THE SUPREME COURT, at 265 (Percival E. Jackson ed., 1962).

[25]"Lawyers of good education and practical competence are generally distinguished for their ability to be resourceful, orderly and dispassionate in their thinking and in their approach to problems."
Gerald R. Ford, Address, Georgia Bar Association, Savannah, *reported in U.S. News & World Report*, June 24, 1974, *reprinted in* THE QUOTABLE LAWYER 192 (David Shrager & Elizabeth Frost eds., 1986).
This is less enigmatic than some of the other comments made by the former President. For example, "We see nothing but increasingly brighter clouds;" and "I love sports. Whenever I can, I always watch the Detroit Tigers on radio." *See* THE 776 STUPIDEST THINGS EVER SAID (Ross and Katherine Petras eds., 1993).

*necessary, the infliction of harm and cruelty to others within my jurisdiction.*[26] *If you do these things, you will have satisfied me."*[27]

"Thank you, Honorable University, for giving my successor the mandate you have given me. I hope your day goes well."

*"So do I. I'm not sure that I can stand another surprise. It is never easy, is it?"*

**"Not for any of us, I suspect,"** The Wizard responded.

**"So, there you are. Boomer, you heard it directly from the University. Of course, I have a few additional points I want to add. First, it is critically important that you fully understand the overall objectives and problems of the University. Second, you will achieve your greatest contributions by being a helper and assisting members of the University community in solving their problems. Finally, you must always recognize that you are a counselor, not a policy maker, and your role is to provide your particular expertise in aiding those who have the actual authority and responsibility for addressing administrative and academic concerns of the institution. That expertise is a tool, not a crown for you, and it must never be abused to advance your own power or importance because few others on the campus possess it.**

**As you go about fulfilling your duties in the next few months, please call me if you hit a rough spot. I'm sure you will slip on a few banana peels. I'll be around town until the summer when I'm leaving for Sri Lanka. I'm going to do a project with a man named Clarke there."**

III

BOOMER'S FOOLISH BEHAVIOR

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[26]"Our friend stood still for a moment, and throwing his head a little back, 'Do you know why this world is as bad as it is?' 'No,' said the other. 'Then I'll tell you. It is because people think only about their own business, and won't trouble themselves to stand up for the oppressed, nor bring the wrong-doer to light. I never see a wicked thing like this without doing what I can, and many a master has thanked me for letting him know how his horses have been used.' 'I wish there were more gentlemen like you, sir,' said Jerry, 'for they are wanted badly enough in this city.' After this we continued our journey, and as they got out of the cab, our friend was saying; 'My doctrine is this, that if we see cruelty or wrong that we have the power to stop, and do nothing, we make ourselves sharers in the guilt."
A. Sewell, Black Beauty (1994 Barnes and Noble Books by arrangement with Robert Frederick Ltd.) at 180."

[27]The University was often criticized by the local media for speaking as if it were reading from Bartlett's Quotations.

Boomer looked pretty dapper for his first event, a welcoming reception for new faculty and administrators. He made the rounds, jovially meeting people and asking about their roles with the University. He was surprised by their warmth and friendly manner. Receptions hosted by his law firm had been rather grim and stilted and he had always been under pressure to introduce some of the special guests in order to transfer their legal business to the firm. "This is so easy," he said to himself as he finished off his second double. He was not only relaxed, but also felt a little tipsy. He was not prepared for the banana peels that were scattered on the floor around him.

In the midst of the reception, an attractive young poodle with curious eyes and blond hair flowing around her low-cut evening dress approached him and introduced herself simply as Serena and said she was supervisor of the University library.

"I don't believe that you're a librarian," he said. "You're putting me on. I'll bet you're one of the student beauties."

"Sorry, but too many years have passed, and you know it," she snapped. "I am with the library," she said, "I've been anxious to meet you. The Wizard has served us so well and we're really going to miss her. Of course, I've heard good things about you and I'm sure you're going to be very helpful to us. We've got a lot of projects for you."

"Well, send them over. That's why I'm here--to serve people. I took a giant pay cut to do it here, but if I'm going to be working with people like you, then I've just found a treasure chest."

She then told him that she used her study at home for working on University projects and said she had heard something about being able to use this for tax purposes. Boomer then launched into a long explanation of how she might get a depreciation deduction.[28] Since a number of people were leaving before he finished, he asked Serena if she wanted to get a cup of coffee somewhere and finish the conversation. She said she didn't believe that would be appropriate and left.

Boomer had a headache the next day. Scotch sometimes did that to him. However, the headache got a lot worse after he was summoned to the President's Office for a long discussion. Red-faced and drenched with perspiration when he left this meeting, he quickly called The Wizard and asked for her help. She met him at the Student Center for lunch. Both were sick that evening.

After describing his various actions at the reception, Boomer told The Wizard that the President had very angrily claimed that he had embarrassed the institution by drinking too much; flirting with the Director of Library Operations, who had the status of a dean; demeaning her position; and acting unprofessionally by giving her personal legal advice. Boomer said he couldn't understand why his behavior was viewed as being so improper.

**"I must be honest with you," The Wizard said. "The University told me that you made it unhappy last night. You not only slipped on some banana peels, you almost killed yourself professionally in the process. You need to recognize that in your position you must set the highest**

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[28]*See* I.R.C. § 280A (c) (1995).

**possible standard for personal behavior and integrity. In many ways you should be the conscience of the institution and its role model for proper behavior. Otherwise, the credibility of your advice will be impaired. You will be surprised to find how often your conduct and your social comments and behavior will be examined and discussed by others. In order to meet the University's expectations for ethics and integrity, you must never again embarrass it or its leadership."[29]**

Boomer took this lesson seriously and became extremely cautious about his statements and his demeanor in public. Unfortunately, he became too anxious about slipping on another peel and for the next few months became very aloof, closeting himself in his office and avoiding most of the University's social functions. Then, one day The Wizard called him.

**She said, "Boomer, the University isn't happy about the way you're avoiding events and functions and isolating yourself from contacts with others outside your office. You may not realize it, but you're hurting its feelings. Counsel for a college or university should be fully engaged with the campus culture.[30] You can do your job much more effectively if people know and trust you. You need to establish confidence and develop friendships with members of the faculty and the administration, students, people in the community, and public officials. You might consider teaching a law class, joining one of the local civic clubs, or working with the student leaders in grappling with their problems. Your involvement in its activities is a way to let people know that you are a good person and can be a real helper. Frankly, you need to spend less time worrying about Boomer's success and advancement and devote more time to understanding and addressing the issues that others on the campus must confront."[31]**

## IV

## BOOMER'S LESSON IN EMPOWERMENT

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[29]"This then is the test we must set for ourselves; not to march alone but to march in such a way that others will wish to join us."
Hubert Humphrey, *Speech, 6 Jan 1967*, Buffalo, *quoted in* THE COLUMBIA DICTIONARY OF QUOTATIONS 296 (Robert Andrews ed., 1993).

[30]An organization's corporate culture is the way insiders behave based on the values and group traditions they hold. HANS FINZEL, THE TOP TEN MISTAKES LEADERS MAKE, 135 (1994).
*Cf.* " 'In all of my years of public life, I have never obstructed justice. And I think too, that I could say that in my years of public life, that I welcome this kind of examination because people have got to know whether or not their President is a crook. Well, I am not a crook,' said Richard Nixon." B. Woodward and C. Bernstein, The Final Days, (1976) at 94.

[31]"To retire to the monastery, or the woods, or the sea, is to escape from the sharp suggestions that spur on ambition." CHARLES HORTON COOLEY, HUMAN NATURE AND THE SOCIAL ORDER (1902), *reprinted in* THE COLUMBIA DICTIONARY OF QUOTATIONS 402 (Robert Andrews ed., 1993).

Boomer followed this advice and became active in several different institutional and community endeavors. He became a popular figure on the campus and his presence and advice became highly valued by those persons he served within the University. However, he was not appreciated nearly as much by those he supervised. The two lawyers on his staff, named Tags and Ribbons, were highly competent terriers, who could handle just about any problem that came their way. Of course, they had much less experience than Boomer so he became an invaluable mentor and resource of knowledge and experience for them. However, he became so invested in their success that he couldn't stand to see them struggle or fail.[32] Therefore, despite his abhorrence of in loco parentis, he began to embrace this principle in supervising them. Sometimes when they were struggling with advising a person or committee in his presence, he would take over and handle the matter himself. He didn't give nearly as much attention to the two secretaries, Thro and Princess, who provided all of the support services for his office. Instead of praising them for their efforts, which were tireless and highly beneficial to him and the other lawyers, he growled and barked at them when they didn't meet his expectations.

One day, late in the afternoon, The Wizard stopped by to chat with him. While they were visiting, they heard some hoots coming from a couple of owls that lived in the trees outside Boomer's office.

**"I always loved those owls and I miss them," The Wizard said. "You know, one year I watched one of them build a nest. It wasn't too long before I saw some heads of baby owls bobbing around the top of the nest. I watched the mother owl nurture and care for them as they grew. However, they were high in the tree and I was concerned that they wouldn't be able to fly out of there. I never saw a bigger owl, like their mother or father, practice flying with them. They may have said a few words here and there in owl language, but then they disappeared. Soon, I saw the whole body of one of the baby owls emerge from the nest and teeter back and forth on the branches, cautiously hopping from one limb to another. Suddenly, it flew perfectly to the next tree. I always thought about that when I worked with the people in this office. I'm sure you would agreed that Tags and Ribbons are outstanding. Oh, I counseled with them through a rough spot here or two, but mainly I empowered them. I gave them my full trust and confidence and when it was time for them to fly, I didn't intrude. I knew that if I tried too hard to help them, I might cause them to fear they couldn't fly, or my weight might cause them to drop to the ground. I stayed out of their hair and I let them know that they were a critical part of our team and that nobody was more important to our success than they were. I knew that without them we could not do our legal work effectively. I let them know that too. Rarely, did I let a day go by without praising them and Thro and Princess, letting them know how much I appreciated and valued them. Of course, I'm sure you do the same thing. You couldn't be successful if you didn't. Things like that help make the University happy."**

Boomer understood The Wizard's advice and followed it. He was not at all not surprised by how much better his staff then performed and how much that pleased the University.

V

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[32]Theodore Roosevelt once said that the best executive is the one who has sense enough to pick good people to do what he wants done, and self restraint enough to keep from meddling with them while they do it. HANS FINZEL, THE TOP TEN MISTAKES LEADERS MAKE, 101 (1994).

## BOOMER GETS A LESSON IN HUMILITY

As the weeks passed, Boomer really began to love his job. He was pleased with the variety of projects in so many different areas of the law that he was able to cover. Like the old family doc, he took everything that came in the door. The phone never stopped ringing, the e-mail screen was always full, and his appointment calendar was as tight as the lug nut on a new car. Boomer thrived on all the action. In an hour he might move through a bond deal, a due process question, a disciplinary dispute, a mental health concern and a contract for the big football game. "Gosh, I must really be smart," he thought. "I know everything about everything in the law."[33]

Unfortunately, Boomer's supreme level of confidence took a jolt when "Elk" Hunter, a large dalmatian who served as the University's athletic director, called and asked if "this Title IX stuff" had anything to do with whether he could get local car dealers to assign more cars to coaches of his men's teams than his women's teams. He said that an athletic director at another school had told him this might be a problem. Boomer exclaimed, "He's not a lawyer, what does he know?" He assured Elk that because the cars were coming from private sources, he didn't have to worry about the problem. Weeks later, Elk received a shrill letter from the Office of Civil Rights demanding to know why the coaches of his men's team got fifteen cars and the women got only one, which they were required to share. The local newspapers also responded, calling Elk "the missing link." Boomer realized that he had given the wrong advice when Elk angrily confronted him in a parking lot and banged on his windshield so hard that he broke it.[34] Boomer put in a hasty call to The Wizard.

**She was already aware of Boomer's bungling. "I know the University isn't very pleased. It certainly isn't happy. Lots of people around campus are concerned that your hat may have shrunk so much that it is too small for your head," she explained.[35] "Boomer, I've heard that you are always**

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[33]A major pronouncement of Socrates at his trial was that the only true wisdom consisted in knowing that you know nothing, even though the oracle at the shrine of Apollo at Delphi had said that no man living was smarter than Socrates. In partial explanation of his conclusion, Socrates explained that he had learned he was wiser than the statesmen, who had the highest reputation for wisdom, because, unlike them, he recognized that he really knew nothing. *See* T.Z. LAVINE, FROM SOCRATES TO SARTRE: THE PHILOSOPHIC QUEST 15 (1984).

[34]A Chicago couple did not evaluate the environment they planned to enter, and, instead, rushed into a situation they thought they could easily handle. They were charged with the attempted armed robbery of Z's Sports Tap, which they allegedly sought to rob despite a "Closed for Private Party" sign, which had been posted for the sake of 100 police officers celebrating a colleague's retirement. Presumably, they were arrested by 101 officers. *Arkansas Democrat Gazette*, December 21, 1995.

[35]"And I kept right on looking and looking until I'd looked round the world and right back to this hill! And I saw on this hill, since my eyesight's so keen, the two biggest fools that have ever been seen! And the fools that I saw were none other than you, who seem to have nothing else better to do than sit here and argue who's better than who! Then the little old worm gave his head a small

**trying to take charge of the meetings you attend and that recently you became so entrenched in your position on one occasion, that you said you would maintain it until 'hell freezes over.' Now, they're convinced you've bungled some advice by being a 'know-it-all' and really agitated old 'Elk,' who is a legend on this campus. He's too nice to bad-mouth you. He'll just wince when your name comes up."**

**She continued, "During the many years that I held your position, I developed an internal explanation of the attributes of those lawyers who appear to be the most respected and accepted by the universities they serve. I believe much of their success in pleasing their clients comes from their manner and attitudes.[36] They are humble and thoughtful, knowing they are counselors and not makers of policy, and that they play only a limited role in a massive undertaking. They have plenty of confidence--so much, in fact, that they see no need to prove their importance to others. They understand the academic culture and move smoothly in and around it. Thus, they easily accept the fact that extensive debate and dialogue are often essential engines in the movement of institutional policy and they are remarkably patient and flexible. The best of them appear to be superb teachers. They raise important questions with full recognition that they don't have all the answers. They are good listeners, who have respect for all people, and who realize that they have much to learn from others. When they aren't sure of an answer, they say so, and they check it out. They may read more about the particular subject or they may call upon a colleague who has special knowledge about it. They never shoot from the hip."**

Boomer was amazed that The Wizard was able to tell him so much about the mistakes he had made without discussing them directly. He then set up a lunch with "Elk" Hunter so he could provide an appropriate mea culpa. The lunch was successful. He simply told "Elk" that he had "screwed up and made an awful mistake" and was sorry that he had misinformed him. There wasn't much "Elk" could say after that, but he did note that when his players admitted they had blown a play, he forgave them, but if it became a pattern, "he didn't have much use for them."

## VI

## BOOMER GETS LOST IN THE TREES

The Wizard's advice about asking questions was especially appealing to Boomer. "That's really what the Socratic Method is all about," he noted to himself. Therefore, when he saw an announcement in the school newspaper about a weekly cookie sale to raise some petty cash for the art department, he decided to use this approach. He set up a meeting with the chairperson of the department, Felicity, a well-groomed golden retriever, to discuss the project.

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jerk and he dived in his hole and went back to his work."
DR. SEUSS, *Yertle the Turtle and Other Stories (1958), in* SIX BY SEUSS 224-226 (1994).

[36]*See* D. GOLEMAN, EMOTIONAL INTELLIGENCE (1995).

At the beginning of the meeting he asked Felicity if she was aware of the "the legal implications of the cookie sale." She said she couldn't see how see this could possibly be a legal matter--that the members of the department and their families would bake the cookies and only a small amount of money would be involved.

"Well, are you aware of the tort of 'strict liability?'" he asked.

"No, I'm not sure what you mean."

"Well you understand the concept of negligence don't you?"

"Yes, I think so. That's when you are careless and fail to do something the way you should have done it?"

"So, assuming that negligence implies a degree of fault in order to be liable, what do you think strict liability would mean?"

"I don't know. Maybe that you're always liable for something?"

"Can you imagine how you might always be liable for hurting somebody with the food you sell whether or not you failed to exercise reasonable care."

"Not really, if the food's prepared properly, I don't see how I could be liable."

"Well, what if you put some chocolate chips in the cookies and somebody was allergic to chocolate and got sick or died? What if the cookies were so hot that they burned somebody's mouth. What if the cookies were so hard that somebody who had no teeth ate them and choked on them? You know that you take your victim as you find him or her, don't you?"

"I'm not sure what that means. Are you saying that we have to cancel the cookie sale because we're likely to be sued?"

"Well, what if somebody did sue and won? Who do you think would have to cover the loss?"

"Young pup, I don't know, but I do know one thing. If you're spending your time questioning people, worrying about things like cookie sales and asking all those 'what ifs,' how do you ever get any of the University's real legal problems solved?"[37]

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[37] *Cf.* C. QUATTROCKI, *Henny Penny, adapted in* TREASURY OF BEDTIME STORIES 45 (1995).

Boomer gulped.[38] A few days later he received an e-mail message from the President's Office stating, "What's the big legal problem with cookie sales on campus?" He quickly arranged a breakfast meeting with The Wizard at Floyd's Doghouse.

As they chewed on breakfast bones, Boomer briefed The Wizard about his conversation with Felicity. She smiled[39] when he told her Felicity's reaction to his questions.

**"I'm sorry I'm laughing," she said, but I couldn't help thinking about Captain Queeg's search for the strawberries. [40] Boomer, those aren't really the kind of questions I was talking about in our previous conversation. When you cross-examine people in the process of giving legal advice, rather than being in a court room, you aren't likely to make them very happy. Also, the Socratic Method may be interesting, but I imagine you hated being the subject of it in law school as much as I did. I remember one year at a NACUA meeting when one of the speakers used that method and a lot of us left and went outside. Somebody said, "I went through that once and I promised myself I'd never do it again. Did you really say things like 'torts,' 'reasonable care' and 'take your victims as you find them?' Do you think she had any idea what you were talking about?"**

**She continued, "Counsel to a university must carefully evaluate appropriate priorities in deciding which legal questions to address. Appropriate perspective is essential. One must carefully avoid initiating legal concerns about trivial issues. Furthermore, as you know, it is important for counsel to discuss legal issues in a way that non-lawyers can understand them. Use of legal phrases can be maddening to one who is not familiar with them. Suppose that after a medical examination, your physician told you that you had elevated estradiol production that could be due to elevation in plasma precursors or peripheral aromatization. Then, suppose he or she asked you what you planned to do about it. What would you say? Also, Felicity's frustration over all your "what ifs" is understandable. Obviously, your ability to identify potential consequences is important, but this technique is often overdone. The next time you say "what if" to somebody in the University, pause for a moment and ask if you are approaching it like a law class or if you are identifying a realistic consequence. An understanding of the limitations in lack of perspective, legalisms, and seeing things that might be, but likely will never be, is extremely important to any lawyer, especially one who is counsel for a university."**

Summer came and The Wizard left. Boomer then took all the wisdom he had learned from The Wizard and put it in an outline for a presentation he made at a NACUA meeting. He didn't understand why those who heard it said that they already knew everything he was conveying and it was a waste of their time. He decided that there must be a lot more wizards than he realized. Maybe he had just been a slow learner.

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[38]Kloe, *supra,* note 10.

[39]A dog smiles by relaxing her face and ears, half shutting her eyes, maybe raising her chin a little and pulling back her lips so that her mouth is relaxed and partly open. Except for the fact that humans usually bare more teeth, the smiling of a lawyer is quite similar.
*See Can a Dog Smile?, U.S.A. Weekend*, Dec. 8-10, 1995 at 18.

[40]*See* WOUK, THE CAINE MUTINY, 300-316 (1951).

It didn't matter. He's performing in all the ways The Wizard taught him and the University is pleased and happy--at least most of the time. When it isn't, he makes sure that he has followed the principles that The Wizard gave him. If so, he doesn't worry. He knows that he too will live happily ever after. After all, at his last evaluation, the President threw him a large, meaty bone.[41]

[41]For those who are curious about the value of the footnotes in this discussion, *see* C. Maher, "The Infernal Footnote" in LAW A TREASURY OF ART AND LITERATURE *at* 348 (Robbins ed.) (1990).